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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,839	10/22/2001	Glen J. Anderson	P1840US00	5510

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EXAMINER

STRANGE, AARON N

ART UNIT PAPER NUMBER

2153

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/041,839	ANDERSON, GLEN J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Aaron Strange	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,4-10,12,26-34 and 36-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-8,10,12,26-31,34 and 36 is/are rejected.
- 7) ☒ Claim(s) 9,32,33,37 and 38 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1,4-10,12 and 26-34 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,4-8,10,26-31,34 and 36 rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al. (US 6,498,955) in view of Yasushi et al. (US 6,084,516).

4. With regard to claims 1,10, and 36, McCarthy discloses a method for providing content, comprising:

identifying a first user profile corresponding to a first user and a second user profile corresponding to a second user (each user has a profile)(Col 22, Line 61 to Col 23, Line 7), the user profiles containing at least one content characteristic for a respective user (musical preference)(Col 22, Lines 65-66);

determining first content characteristics common to at least the first user and the second user based on the first user profile and the second user profile (most preferred musical genres)(Col 23, Lines 18-27);

outputting content including the first content characteristics to the first user and the second user in a first location (play preferred station in the fitness center)(Col 23, Lines 40-52).

McCarthy fails to specifically disclose detecting movement of the first user from the first location to a second location in which said content is not being outputted, determining second content characteristics if a third user is present at the second location and a threshold time passes, or outputting the content at the second location immediately if a third user is not present.

Yasushi teaches detecting movement of a first user from a first location outputting a first content to a second location where the content is not being outputted (users move between rooms) (At least Col 10, Lines 1-15; Col 12, Lines 30-40; Col 13, Line 66 to Col 14, Line 13), determining whether a third user is present at the second location (Col 12, lines 30-48), modifying the content being outputted at the second location if a third user is present (users with plural users use common audio source) (Col 12, Lines 30-48), and continuing the first content if not user is present (rooms with one user use individual audio source) (Col 10, Lines 1-15 and Col 13, Line 66 to Col 14, Line 13). This would have been an advantageous addition to the system disclosed by McCarthy since it would have allowed different rooms such as the locker rooms and main gym area to play different songs based on the preferences of the users in each

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room. As each user moved between the rooms, their preferences would be considered for the room they are in, modifying the output accordingly.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to detect movement of a user between locations, and adjust the output content when the new location already contains other users, since this would have allowed the preferences of the users to be considered for each room they are in, and ensure that mutually acceptable content is output in each location.

5. With regard to claim 4, McCarthy further discloses that the identified user profiles are at least one of: stored in a centralized database (Col 22, Line 61 to Col 23, Line 7) and received from the users (Col 22, Lines 65-66).

6. With regard to claim 5, McCarthy further discloses that the first and second content characteristics include at least one of: style of content (preferred musical genre)(Col 22, Lines 65-66), content author and content performer.

7. With regard to claim 6, McCarthy further discloses that the first and second content characteristics include at least one of: output mode of content (musical genre) (Col 3, Lines 61-67 and Col 22, Lines 65-66) and content playing device.

8. With regard to claim 7, McCarthy further discloses that the content includes at least one of: audio data (Col 22, Lines 55-57); visual data including at least one of

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graphics, pictures and surface covering appearance; aroma; ambiance lighting; temperature; and airflow.

9. With regard to claim 8, McCarthy further discloses establishing a time including at least one of time of day (90 minutes after member entered)(Col 24, Lines 32-39), time of week, time of month and time of year, wherein the established time is utilized in determining the first content characteristics.

10. Claims 26-31 and 34 are rejected under the same rationale as claims 1,4-8, and 10, since they recite substantially identical subject matter. Any differences between the claims do not result in patentably distinct claims and all of the limitations are taught by the above cited art.

11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al. (US 6,498,955) in view of Yasushi et al. (US 6,084,516) in further view of Sainton et al. (US 5,854,985).

12. With regard to claim 12, while the system disclosed by McCarthy and Yasushi shows substantial features of the claimed invention (discussed above), it fails to disclose generating a third user profile for the third user, wherein the user profile is generated by at least one of general demographic information of users present and based on past users encountered.

Sainton teaches generating a default user profile based on the preferences of a large number of users that have been previously encountered (Col 17, Lines 49-57). The users may then update their profile at a later time to reflect their personal preferences. This would have been an advantageous addition to the system disclosed by McCarthy since it would have given new users a default profile that corresponds substantially to the preferences of the group. Therefore, this user would not have a substantial impact on the choice of music played when he or she is present.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to generate a default user profile for a new user based on past users encountered since it would not substantially impact the choice of music by the system until the user updated their profile with their personal preferences.

#### ***Allowable Subject Matter***

13. Claims 9,32,33,37, and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. The following is a statement of reasons for the indication of allowable subject matter:

With regard to claims 9,32,33,37, and 38, while the prior art of record shows substantial features of the claimed invention (discussed above), the prior art of record does not disclose a system as claimed, and as enabled by the specification, where the

orientation of the first user and the second user is established with regard to a first device and a second device, and the orientation is utilized to determine at least one characteristic of the first content characteristics in combination with the other aspects claimed in independent claims 1 and 26.

The Examiner would like to note that the term "orientation" has been interpreted as the direction that a user is facing, and as distinct from the user's position in the room. This interpretation is in accordance with pages 8-9 of the specification, figures 5 and 6, Applicant's arguments on page 13 of the remarks filed 5/3/2005, and the addition of new claims 37 and 38, which clearly refer to a position of the user as distinct from the orientation of the user.

### ***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Strange whose telephone number is 571-272-3959. The examiner can normally be reached on M-F 8:30-5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AS  
11/25/2005



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